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SENATE

{ REPORT
101-440

NATIONAL RECYCLABLE COMMODITIES
ACT OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science,
and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION

ON

S. 1884



AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative
day, July 10) 1990

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NATIONAL RECYCLABLE COMMODITIES ACT OF 1990

AUGUST 30, 1989.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day,
July 10), 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1884]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1884) to promote the use of recycled materials derived from municipal refuse, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill as amended do pass.

PURPOSE OF BILL

The bill, as reported, is intended to encourage the expansion of industrial capacity for the manufacture of recycled goods, and to stimulate and strengthen available markets for recycled goods. This would be done through creation of a Bureau of Recyclable Commodities within the Department of Commerce (DOC) that would have a variety of responsibilities in this regard.

BACKGROUND AND NEEDS

NEED FOR INCREASED RECYCLING

There is general agreement that the disposal of municipal solid waste is a major problem facing our country today. According to the Office of Technology Assessment (OTA), in the United States at least 160 million tons of municipal solid waste is generated each year—well over one-half ton per person—and that amount is rising steadily. The most recent data available indicate that about 80 per-

cent of this municipal solid waste is sent to landfills. Only about 10 percent is recycled and 10 percent is incinerated, although the percentage of recycled material is believed to be rising. Testimony of Dr. Howard Levenson, OTA, before the House Subcommittee on Commerce, Consumer Protection and Competitiveness, June 28, 1990 at 3.

This reliance on landfills presents difficulties. The Environmental Protection Agency (EPA) estimates that 80 percent of existing landfills will close within 20 years. Levenson Testimony, *supra*, at 3. This closure rate is the result of the fact that, because older landfills are reaching the end of their life expectancy, more stringent environmental regulations are closing substandard landfills, and there is often community opposition to situating new landfills in particular areas.

Moreover, recent analysis has demonstrated that even organic wastes biodegrade very slowly, if at all, in landfills. Excavation of landfills has uncovered food over 10 years old, and newspapers over 30 years old. Testimony of W.L. Rathje, Professor, Department of Anthropology, University of Arizona, before the Senate Consumer Subcommittee, June 13, 1990. Thus, waste in landfills does not decompose fast enough to make room for the incoming waste, so landfills cannot be the ultimate solution for disposal of solid waste.

For at least certain materials, recycling is frequently the lowest cost alternative for managing this solid waste. See testimony of Alan M. Dunn, Deputy Assistant Secretary of Commerce, DOC, before the Senate Consumer Subcommittee, June 13, 1990; testimony of Dr. Allen Herschkowitz, Senior Staff Scientist, Natural Resources Defense Council, before the Senate Consumer Subcommittee, June 13, 1990. Additionally, by 1995, over 20 trillion BTUs, or the equivalent of 3,400,000 barrels of oil, could be saved annually through the use of recovered materials as feedstocks in the manufacture of new products. Testimony of Jan H. Freeman, Executive Director, Pennsylvania Energy Office, before the House Subcommittee on Commerce, Consumer Protection and Competitiveness, June 28, 1990.

Consumers and local governments increasingly recognize the importance of recycling and increasingly participate, voluntarily or through state or local legislation, in separating materials for recycling from waste. However, separation alone does not guarantee that a product will be recycled. Rather, recycling is a complex process with several components, including separation, collection, processing, and return of the recycled product to the marketplace. Without all elements of the process in place, the recycling alternative to solid waste disposal will not be effective. See testimony of Bradley N. Currey, Jr., on behalf of the American Paper Institute, before the Senate Consumer Subcommittee, June 13, 1990.

There is already evidence that industrial use of recovered materials has not been conducted on a scale sufficiently large to accommodate the increased efforts throughout the country in separating materials for recycling. For example, in Washington, DC, collected newspapers were stockpiled due to the lack of an adequate market for those papers, while in Los Angeles the recycling program experienced a lack of demand for its glass. Testimony of Alair MacLean, Vice President, Fiber Recovery Unlimited, before the

Senate Consumer Subcommittee, June 13, 1990. Many localities have found few options for selling or even giving away the tons of items collected for recycling. The result could be that these separated materials ultimately will be disposed of in landfills or incinerators for lack of viable alternatives. Testimony of Councilman Mark Schwartz, Oklahoma City, Oklahoma, Council Member, on behalf of the National League of Cities, before the House Subcommittee on Commerce, Consumer Protection and Competitiveness, June 28, 1990.

Thus, a major factor in the success of recycling as a waste disposal solution is the existence of markets for recovered material. According to a September, 1989 study by Shearson Lehman Hutton, "recycling's primary limitations pertain to the lack of efficient distribution of recycled materials, which frequently results in unstable markets, and the lack of incentive for industry to use recycled, rather than virgin, materials. These problems could be best addressed at the federal level * * *" Shearson Lehman Hutton, "Industrial Pollution Control: Recycling," September 28, 1989, at 14, 21; cited in testimony of Dr. Allen Hershkowitz, Senior Staff Scientist, Natural Resources Defense Council before the Senate Consumer Subcommittee, June 13, 1990.

On the other hand, if efforts are not made to ensure that markets exist, there can be dire consequences for the waste disposal effort as well as the Nation's economy and competitiveness. See testimony of Alair MacLean, Vice President, Fiber Recovery Unlimited, before the Senate Consumer Subcommittee, June 13, 1990, at 2-3. The steel industry provides a striking example of what can occur. In the 1960s, the United States was the "king" of steel making and was constructing basic oxygen furnaces, which require virgin material. At the same time, the Japanese and Korean industries, unable to afford virgin material, were building electric arc furnaces that use 100 percent scrap material. The scrap was low-cost material that the United States sold to the Japanese and Korean industries because the United States had no use for it. However, it allowed the manufacture of steel by Japanese and Korean industries for \$45 to \$120 per ton less than American steel. See Kovacs, "Basis For A New Industrial Policy," Pulp and Paper Magazine, March, 1989. Thus, now that consumers increasingly are participating in recycling efforts, it is critical to ensure that industrial capacity and markets for recycled goods exist.

FEDERAL GOVERNMENT ROLE

Testimony from a wide range of experts on this issue has emphasized the need for an increased federal role in expanding industrial capacity and markets for recycled goods. As Councilman Mark Schwartz, on behalf of the National League of Cities, stated: "[w]e also believe that unless we see a concerted Federal effort to enter the fray by developing reliable markets for secondary materials—efforts of the kind envisioned in the proposed legislation—businesses and local governments simply will not succeed in establishing and maintaining aggressive and successful recycling programs." Testimony of Councilman Schwartz before the House Subcommittee on Commerce, Consumer Protection and Competitiveness, at 2.

Many experts also conclude that it is a mistake to deal with recycling only as an environmental, and not as an economic, issue. As Dr. Herschkowitz of the Natural Resources Defense Council has stated: "[i]t has long been known that the act of diverting valuable resources (e.g. paper, glass, metals, wood, plastics, rubber, etc.) out of America's trash stream and into the world economy is an act of secondary materials commodity brokering. Unfortunately, the brokering of these resources compares unfavorably with the brokering of other commodities. This has occurred for a number of well-known reasons including: * * * the tendency to view recycling as an environmental activity in the absence of essential economic development and support." Herschkowitz testimony before the Senate Consumer Subcommittee, June 13, 1990, *supra* at 3-4.

It is for this reason that this legislation places increased responsibility for recycling with DOC. As OTA has recognized, "[i]n theory, it makes sense to increase the DOC's involvement in [municipal solid waste] recycling, especially in terms of market analyses. * * * [T]he Department has tremendous expertise in market analyses in general, expertise that could be of great use in stimulating increased use of secondary materials in the manufacturing and sale of products." Levenson testimony, *supra* at 13. Thus, source separation will result in recycling only if there is a market for the material diverted from the solid waste stream.

OTA also recognizes that "the Department of Commerce conducted much useful work [in this area] in the 1970s * * * on procurement requirements, test methods and specification guidelines for numerous materials, resources recovery technologies, and recycling markets and costs." (Id. at 13-14.)

As testimony before the Senate Consumer Subcommittee recognized, "[t]he focus of this legislation, shifting responsibility for developing domestic markets for recyclable materials from EPA to DOC, reflects an important shift in the perception of recycling. Up until now the Federal government has primarily seen recycling as a response to an environmental problem or as an opportunity for increasing exports. By shifting responsibility for procurement and labeling of recycled products to DOC, this legislation recognizes the important opportunities for local economic development inherent in the collection of waste materials." Testimony of Alair MacLean, Vice President, Fiber Recovery Unlimited, *supra*, at 3; see also testimony of Jan H. Freeman, Executive Director, Pennsylvania Energy Office, before the House Committee on Commerce, Consumer Protection and Competitiveness, June 28, 1990.

To further this effort, the legislation assigns responsibilities to DOC in a variety of areas, consistent with OTA's analysis of the issue. OTA has testified that the opportunities for the Federal Government to stimulate recycling exist in the areas of information and education; research and development; development of standardized definitions, testing procedures and labeling; market development (including Federal procurement); and regulatory actions. Testimony of Dr. Howard Levenson, Oceans and Environment Program, OTA, before the House Subcommittee on Commerce, Consumer Protection and Competitiveness, June 28, 1990, at 11-12. The bill deals with each of these areas of responsibility.

LEGISLATIVE HISTORY

Senator Gore introduced S. 1884 on November 15, 1989. The bill is cosponsored by Senators Gorton, Lugar, Mikulski, and Conrad. The Consumer Subcommittee held a hearing on this legislation on June 13, 1990. On July 31, 1990, the Committee, in open executive session, considered the bill and ordered reported without objection an amendment in the nature of a substitute offered by Senator Gore.

A similar bill, H.R. 4942, was introduced in the House of Representatives on May 24, 1990, by Congressman Sikorski. The bill was referred to the House Committee on Energy and Commerce, and specifically to the Subcommittee on Commerce, Consumer Protection, and Competitiveness as well as to the Subcommittee on Transportation and Hazardous Material. A hearing was held in the House Subcommittee on Commerce, Consumer Protection, and Competitiveness on June 28, 1990.

SUMMARY OF MAJOR PROVISIONS

The reported bill establishes a Bureau of Recyclable Commodities within DOC to carry out the purposes of the bill.

STATISTICS ON SOLID WASTE

The bill requires the Secretary of Commerce (Secretary) to gather statistics about specific materials in solid waste and recovered materials. The statistics required include those regarding quantity of particular materials and methods of disposal or recovery.

IDENTIFICATION OF GRADES AND SPECIFICATIONS

The bill requires the Secretary to identify, within nine months after enactment of the legislation, materials that qualify as recovered materials and (if practicable) to standardize the types and grades of those materials, the specifications for recycling, and the test methods to be used in determining compliance with those specifications.

PERIODIC MARKET ANALYSES

The bill requires the Secretary to prepare and make available to the public, on at least an annual basis, several reports on recovered materials, including quarterly price analyses of recovered materials, national recycling rates for each material, and analyses of the technical and economic factors that influence foreign and domestic markets for recyclable commodities.

REPORTS ON RECYCLING CAPACITY

The bill requires the Secretary to prepare and submit to Congress reports evaluating (1) the potential for expanded recycling of certain materials, such as waste paper, paperboard, plastic scrap, and glass waste; (2) the techniques and systems used by industries and state and local governments to separate, collect, and process materials; and (3) the adequacy of existing industrial capacity for manufacture and transportation of recycled goods.

LABELING OF NONDURABLE GOODS

The Secretary is required to promulgate regulations regarding labeling on the recyclability and composition of various goods, including food and consumer goods, packaging and paper products. Use of labeling regarding recyclability would be voluntary with manufacturers but, if labels were used, they would have to meet the regulatory requirements.

FEDERAL PROCUREMENT

The Secretary is required to issue guidelines for the use of Government procurement agencies in complying with the requirements of the bill, including, if practicable, requirements specifying the level of recycled content to be contained in the procured item. At a minimum, the Secretary must establish minimum requirements for procurement of specified materials including recycled paper. The Secretary also is required to develop guidelines to assist each Federal agency in the development of affirmative procurement programs. These programs are to assure that items made from recovered materials are purchased to the maximum extent possible.

PROMOTION OF EXPORT MARKETS

The bill requires the Secretary, in cooperation with the Department of State, to develop a program to promote the export of recovered materials. As part of the program, the Secretary is to prepare and make available to the public information and statistics about potential foreign markets for recyclable commodities.

ADVERTISING CAMPAIGNS

The bill requires the Secretary to develop a national advertising campaign to promote recycling and the purchase of recycled goods.

UNIVERSITY RESEARCH CENTERS

The Secretary is authorized to make grants to institutions of higher education to establish and operate up to six recycling research centers in the United States. The Federal grants are limited to 80 percent of the cost of establishing and operating the centers. These centers are to conduct basic research into innovative recycling processes, specifications and test methods for recycled commodity quality, and potential markets for recycled goods. Each center must carry out at least one project on the composting of waste.

FEDERAL OFFICE SOURCE SEPARATION PROGRAMS

The bill requires the Secretary, working with the General Services Administration and the Public Printer, to establish a program to facilitate the source separation and collection of waste materials from federal agencies, departments, and instrumentalities, to facilitate recycling. Each Federal agency and department is required to carry out the program.

REVIEW OF PRODUCTION SPECIFICATIONS AND STANDARDS

The bill provides that the Secretary may conduct an independent technical assessment of any product specification or standard set by a Federal, state, or local government agency, industry trade association, or other standard-setting group that disfavors the use of a recyclable commodity as a substitute for comparable virgin feedstocks, and has a substantial adverse impact on existing or potential markets for the recyclable commodity.

INTERAGENCY WORKING GROUP

The Secretary is required to establish an interagency working group to ensure that the regulations and guidelines developed under the bill are consistent with actions taken by the EPA and other Federal agencies.

AMOUNT OF AUTHORIZATION

The bill authorizes an appropriation to DOC of \$60 million in each of fiscal years 1990 through 1994 to carry out the requirements of the bill.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1984, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 24, 1990.

Hon. ERNEST F. HOLLINGS,
Chairman, Committee on Commerce, Science, and Transportation
Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1884, the National Recyclable Commodities Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISHCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE

1. Bill number: S. 1884
2. Bill title: National Recyclable Commodities Act of 1990
3. Bill Status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 31, 1990.
4. Bill purpose: S. 1884 would establish the Bureau of Recyclable Commodities within the Department of Commerce (DOC) to promote the use of recovered materials diverted from solid waste. The bureau would be charged with collecting data, producing reports, and standardizing technical specifications and test methods for the recycling of commodities. The bill also would require the DOC to

make grants to universities to establish recycling research centers. In addition, the bill would require all federal departments and agencies that procure materials to purchase items composed of recovered materials and would require that federal departments and agencies operate source separation programs. The bill would authorize the appropriation of \$60 million annually in each of fiscal years 1991 through 1995 to the DOC to carry out the bill's purposes.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level.....	60	60	60	60	60
Estimated outlays.....	48	60	60	60	60

The costs of this bill falls within budget function 370.

Basis of Estimate: For the purposes of this estimate, it is assumed that S. 1884 will be enacted late in fiscal year 1990 and that the full amounts authorized will be appropriated for each fiscal year. Based on information from the committee staff, CBO also assumes that the costs to federal agencies to carry out the procurement requirements and source separation programs would be included in the amounts authorized for appropriation. Outlays have been estimated on the basis of historical spending patterns for similar activities. The impact of several provisions cannot be estimated at this time. For example, federal departments that conduct source separation programs may be able to sell recovered materials. The amount of receipts would depend on the markets for the materials, which are very uncertain. In addition, the bill would require the DOC to receive reimbursement for the data and information it collects and publishes under the bill. Potential receipts would depend on whether costs were fully reimbursed and which users were charged. Finally, the bill would allow the DOC to assess penalties for misuse of recyclability labels and seals. CBO cannot predict the potential number of violations. In total, these various types of receipts are not likely to be substantial.

6. Estimated costs to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by Laura Carter.

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation.

NUMBER OF PERSONS COVERED

The bill transfers certain responsibilities from EPA to DOC and requires the gathering of information from industries currently

analyzed by DOC, and thus those provisions of the bill should not cover a significant number of additional persons. To the extent that individuals and organizations are required to submit additional data to DOC, the bill will have an impact, although not a significant one, on those persons. The bill will require Federal agencies to meet certain regulations not now in effect regarding procurement and waste disposal. Those provisions of the bill will cover an additional number of Federal employees involved in waste disposal and procurement.

ECONOMIC IMPACT

The bill authorizes an appropriation of \$60 million for each of the fiscal years between 1990 and 1994.

Additionally, the bill requires federal agencies to separate waste materials for recycling. This provision ultimately could result in some savings to federal agencies in the cost of their waste disposal.

PRIVACY

This legislation will not have any impact on the personal privacy of the individuals affected.

PAPERWORK

This legislation requires certain regulatory and data gathering activity by DOC. Since most of these activities are already required of DOC or EPA, the bill should not result in significant additional paperwork.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states the short title of the bill as the "National Recyclable Comomdities Act of 1990."

SECTION 2.—FINDINGS

This section sets out the findings on which the bill is based, including findings that much greater quantities of refuse materials can be recycled, and that the Federal Government should play a key role in expanding the recycling industry and recycling markets.

SECTION 3.—BUREAU OF RECYCLABLE COMMODITIES

This section requires the Secretary to establish within DOC a separate office called the "Bureau of Recyclable Commodities." The principal purpose of the office is to promote the use of recycled materials derived from solid waste and to carry out the provisions of the legislation under the direction of the Secretary.

SECTION 4.—ANNUAL STATISTICS ON SOLID WASTE AND OTHER MATERIAL

This section pertains to the collection by the Secretary of statistics on solid waste and other materials.

Subsection (a) requires the Secretary to gather statistics on solid waste, and the following types of recovered materials: (1) aluminum scrap; (2) lead scrap; (3) other nonferrous scrap; (4) ferrous scrap; (5) plastic scrap; (6) rubber scrap; (7) waste glass; (8) recoverable paper and paperboard; (9) yard waste; and (10) food waste.

Subsection (b) requires the Secretary to collect statistics and information on materials listed in subsection (a), including quantities of goods that are likely to become solid waste from various sources, and the quantities of that waste that are recycled or managed by other techniques.

Subsection (c) requires the Secretary, for those materials being recycled, to collect statistics and information, including specific recycling techniques employed by industries and households, quantities of materials annually recycled, available markets for recycled goods, and existing industrial capacity for manufacturing recycled goods.

Subsection (d) requires the Secretary to collect and publish the statistics and information required under this section within six months after the date of enactment of the legislation, and to update such information on an annual basis.

Subsection (e) requires the Secretary, in consultation with the states, to designate no fewer than 6 and no more than 10 multi-State regions for regional data collection and to collect and compile statistics for each of the designated regions.

Subsection (f) requires the Secretary to revise, as necessary, the standard industrial classification system to facilitate the collection of statistics and other information on recycling and other related activities.

Subsection (g) provides that the section does not require the Secretary to obtain information that is otherwise privileged or confidential under section 4 of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

SECTION 5.—IDENTIFICATION OF GRADES, SPECIFICATIONS, AND TEST METHODS FOR RECOVERED MATERIALS

Subsection (a) requires the Secretary to identify, within nine months after enactment of the legislation, those material that qualify as recovered materials, including materials listed in section 4, and, if practicable, to standardize the types and grades of those materials, and to revise such types and grades as is necessary.

Subsection (b) provides that the identification of recoverable materials under subsection (a) shall be based on material grades that are (1) traded on commodity exchanges or markets, (2) used as raw materials or feedstocks in the manufacture of recycled goods, or (3) material grades that are purchased or accepted for eventual recycling after further source-separation, collection, transport, stockpiling, processing, upgrading, or other handling.

Subsection (c) provides that the Secretary shall assign solid waste materials to multiple types of grades in the identification of types and grades that qualify as recovered materials.

Subsection (d) requires the Secretary, within nine months after the date of enactment of the bill, and in consultation with appropriate recycling industries and other affected parties, to identify,

and to the extent practicable, standardize the technical specifications applying to the use of recyclable commodities as raw materials or feedstocks for recycling, and to revise the specifications periodically. As reported, this subsection makes clear that the Secretary may use technical specifications already in effect, without modification and without consultation under the bill, so long as those specifications do not conflict with the other requirements of the bill.

Subsection (e) requires the Secretary, within nine months after the date of enactment of the bill, and in consultation with appropriate recycling industries and other affected parties, to identify, and to the extent practicable, standardize the test methods employed in determining whether recovered materials meet the specifications that apply to recyclable commodities.

Subsection (f) requires the Secretary to establish an advisory panel to assist in the identification of specifications and test methods of recyclable commodities. The advisory panel is to consist of (1) representatives of industries currently engaged in recycling of commodities; (2) representatives of other public or private groups that set specifications or test methods for recyclable commodities; (3) representatives of industries and local governments currently engaged in collection and transport of recyclable commodities; (4) representatives of state governments, and consumer and environmental organizations, and (5) representatives of industries that are current or potential users of recycled materials.

Subsection (g) provides that industries or local governments engaged in recycling activities may petition the Secretary for revision of applicable commodity grades, specifications, or test methods as necessary to prevent or minimize interference with current recycling techniques. The Secretary is required, not later than 90 days after receipt of the petition, either to deny or approve the petition, and, if necessary, make appropriate revisions.

Subsection (h)(1) requires the Secretary to issue a recycling advisory to States, local governments, and affected industries, if it is discovered that a physical or chemical property or contaminant of a commodity is interfering with (A) current recycling techniques; (B) the marketing of recycled goods manufactured from the commodity; or (C) the handling of the commodity, and is not addressed adequately by applicable specifications or test methods.

Subsection (h)(2) provides that the recycling advisory shall describe the physical or chemical property or contaminant that contributed to the interference as described in subsection (h)(1), and identify any precautions or measures that may be taken to eliminate or minimize the interference.

SECTION 6.—PERIODIC MARKET ANALYSES

Subsection (a) requires the Secretary to prepare and make available to the public, on at least a quarterly basis, a report on the prevailing market price for recovered materials. The first report is due one year after the date of enactment of the bill, and shall contain price information for both domestic and export markets, and for each of the designated regions as designated by the Secretary under section 4(e).

Subsection (b) requires the Secretary, on at least an annual basis, to make available to the public a report on the prevailing national recycling rate for each recovered material and, to the extent practicable, the prevailing recycling rates in each of the designated multi-state regions.

Subsection (a) requires the Secretary, on at least an annual basis, to make available to the public a report analyzing the technical and economic factors that influence foreign and domestic markets for recovered materials and to the extent practicable, evaluating the factors that influence markets in each of the designated multi-state regions. The factors that must be considered in the analyses include: future supplies of recovered materials; available production capacity for recycling industries; strength of existing markets and potential for development of new markets; and potential competition from substitute factors in production. The first report is due one year after the enactment of the bill.

Subsection (d) provides that the Secretary may develop appropriate indices to assess market trends in recovered materials.

SECTION 7.—REPORTS ON RECYCLING CAPACITY

Subsection (a) requires the Secretary, within nine months after enactment of the bill, to prepare and submit to Congress two reports evaluating the potential for expanded recycling of the following: recoverable paper and paperboard, rubber scrap, plastic scrap, ferrous scrap, lead scrap, aluminum scrap, other nonferrous scrap, waste glass, and yard and food waste.

Subsection (b) provides for the specific issues to be addressed in each report, including: techniques used by industries and local governments to process the materials covered in the report; the adequacy of existing industrial capacity for the manufacture of recycled goods, and the possibility for expansion of such industrial capacity; the extent of federal incentives and other incentives which are provided for the manufacture of virgin materials which compete with the recycling of materials covered by the report; and available options for influencing the timing and the extent of private and government investment, manufacture, transportation, and stockpiling of recycled goods and materials.

Subsection (c) provides that the report required under subsection (a)(1) is due within nine months after enactment of the bill, and the report required under subsection (a)(2) is due within 18 months from the date of enactment.

SECTION 8.—LABELING OF NONDURABLE GOODS

Subsection (a) requires the Secretary to promulgate regulations regarding labeling on recyclability and composition of nondurable products.

Subsection (b)(1) provides that such regulations are required to be promulgated within two years for containers and packaging used to hold such products as food, beverages, soaps, detergents, cleaning preparations, and personal care products.

Subsection (b)(2) provides that such regulations must be promulgated within three years for paper and paperboard products sold to

office, commercial, and industrial establishments and households, and provides for the placement of labels on such products.

Subsection (b)(3) provides that such regulations must be promulgated within four years for other containers, packaging, and nondurable goods, or classes of such items, as determined by the Secretary, pursuant to guidelines provided in the subsection.

Subsection (c) provides that, in determining the type of label to be required on items covered under the regulations, the Secretary shall determine the recyclability of such items, taking into consideration the factors listed in the subsection, including the demonstrated recyclability of the principal constituent material of such an item as defined in the bill, either nationwide or across two or more regions; the potential presence of contaminants which may interfere with existing recycling techniques; and the grades of commodities defined by the Secretary under section 5.

Subsection (d)(1) provides that any item or class of items determined by the Secretary to be recyclable may be labeled "RECYCLABLE _____," with the blank space filled in with the principal constituent used in manufacturing the item. The label also, to the maximum extent feasible, shall provide information that will assist in the identification of recyclable commodity grades potentially produced from the item. The bill as reported does not mandate the labeling of such products, but merely permits the use of such a label for those products that meet regulatory requirements.

The labeling requirements established by this section recognize that the use of a label claiming that a product is "recyclable," without appropriate explanation or qualifications, may mislead the consumer. Products labeled "recyclable," with reasonable likelihood, should be susceptible of local or regional reprocessing at a recycling facility. Before a "recyclable" label is permitted, the Secretary should consider what rates of recycling are feasible at the time, and use of the label should be permitted as soon as possible after the minimum required rates of recycling are found to exist.

Subsection (d)(2) provides that the Secretary may establish an alternative label for an item or class of items (such as codes or symbols) if such label conveys the information on recyclability and composition substantially similar to that otherwise required.

Subsection (e) requires the publication of a standardized, national recyclability seal or symbol, no later than two years after the enactment of the legislation, to assist purchasers in the identification of recyclable packaging, containers, and nondurable goods. The seal or symbol may be used voluntarily by any manufacturer. The seal or symbol shall be distinct from the label requirements under subsection (d) of this section.

Subsection (f)(1) authorizes the Secretary to institute, whenever there is improper use of the recyclability label or seal, a recall of the item, or to commence a civil action in the Federal district courts.

Subsection (f)(2) provides that recall orders shall become final unless, not later than 30 days after the order is served, the person named in the order requests a public hearing. Upon such request, the Secretary shall promptly conduct a public hearing and may issue subpoenas to compel testimony and production of documents and may promulgate discovery rules.

Subsection (f)(3) authorizes the Secretary to assess a civil penalty of up to \$25,000 per day if a violator fails to take the required or necessary correction action within the time specified in a recall order.

Subsection (f)(4) provides that the Secretary may compromise any civil penalty or remedy under this section, and must consider the size of the business or person charged and the gravity of the offense.

Subsection (g) provides that an item may be labeled "recycled" only if the actual percentage of recycled content of the constituent material, as well as the principal constituent material, is identified as part of the label.

SECTION 9.—FEDERAL PROCUREMENT

Subsection (a) requires the appointment of a task force by the Secretary for the purpose of developing a plan for the orderly transfer of responsibility for procurement regulations from EPA to DOC. The subsection states the membership of the task force, and requires that, after completion and review of the plan, a report shall be submitted to the appropriate congressional Committees stating the plan and any additional recommendations.

Subsection (b) requires the Secretary, after consultation with the Administrator of General Services, the Public Printer, and all other agencies in charge of their own procurement, to issue guidelines for the use of Government procurement agencies in complying with the requirements of the bill, including guidelines identifying those items which can be produced with recovered material and the level of recycled content to be contained in the procured item.

Subsection (c) provides that, at a minimum, the Secretary must modify existing guidelines for the procurement of recycled paper and paperboard goods, and must issue guidelines for the procurement of waste glass in highway construction; the use of waste rubber in highway and nonroadway construction; the use of compost; the use of containers, packaging, and other goods made from aluminum scrap, ferrous scrap, plastic scrap, and waste glass; and at least three additional categories of items.

Subsection (d) provides that the guidelines must be reviewed within two years after issuance, and at least every two years thereafter, to increase minimum recycled content standards to the maximum extent practicable.

Subsection (e) authorizes the Secretary to establish minimum content standards for other items.

Subsection (f) requires the Secretary, in consultation with appropriate industries and organizations, to develop verification procedures to determine the percentage of recycled content of a commodity.

Subsection (g) provides general requirements for procuring agencies, including a requirement that each procuring agency shall procure items composed of the highest percentage of recycled content practicable. The subsection further provides that such items with recycled content may be procured even if the price exceeds the price of alternative items, so long as the price difference is no more than 10 percent. These requirements apply to procurement of any

item covered by the bill in which the contract provides that the purchase price of an item or group of equivalent items exceeds \$10,000.

Subsection (h) requires each agency, within one year of the issuance of procurement guidelines, to develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable.

Subsection (i) provides the Secretary, in cooperation with the Administrator for Federal Procurement Policy, the authority to implement the procurement requirements.

Subsection (j) requires the Secretary annually to report to Congress on actions taken by Federal agencies and the progress made in implementation of the procurement requirements.

Subsection (k) contains a conforming technical amendment which repeals section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962).

Subsection (l) provides that any regulation, rule, guideline, or action taken pursuant to section 6002 of the Solid Waste Disposal Act shall remain in effect under this section until repealed, amended, or superseded; and that any action taken under that section prior to enactment of the bill shall be treated as having been taken under the bill.

SECTION 10.—PROMOTION OF EXPORT MARKETS

This section requires the Secretary, in cooperation with the Department of State, to develop a program to promote the export of recovered materials for recycling by foreign industries. As part of the program, the Secretary shall prepare, and make available to the public, information and statistics about potential foreign markets for recovered materials, including specifications and test methods, and about prevailing prices in foreign markets.

SECTION 11.—PUBLICATION OF INFORMATION

This section provides that the Secretary shall make available to the public, on a cost-reimbursable basis, all statistics, market analyses, and other information related to recycling collected pursuant to the bill.

SECTION 12.—NATIONAL ADVERTISING CAMPAIGN

This section requires the Secretary to develop a national advertising campaign to promote recycling and the purchase of recycled goods. The Secretary is authorized to publish recycling rates for particular commodities and information about standards for recycled material in conjunction with the advertising campaign.

SECTION 13.—UNIVERSITY RECYCLING RESEARCH CENTERS

This section authorizes the Secretary to make grants to institutions of higher education to establish and operate not less than four or more than six recycling research centers in the United States. The centers are to be equitably distributed among the regions of the United States. The Federal grants are limited to 80 percent of the cost of establishing and operating the centers. These centers are to conduct basic research into innovative recycling

processes, specifications and test methods for recycled commodity quality, and potential markets for recycled goods. Each center must carry out at least one project on the composting of waste, and is authorized to enter into contracts to assist it in developing and instituting such projects. No funds allocated under the section may be used for acquisition of real property or construction of buildings, and at least 40 percent of the funds shall be used for joint research projects with local governments.

SECTION 14.—FEDERAL OFFICE SOURCE SEPARATION PROGRAM

This section requires the Secretary, working with the Administrator of General Services and the Public Printer, to establish a program to facilitate the source separation and collection of waste materials from federal agencies, departments, and instrumentalities to facilitate recycling, and to establish certain guidelines for carrying out such program. The materials that must be included in such a program are recoverable paper and paperboard, waste glass, plastic scrap, aluminum scrap, and any other materials identified by the Secretary. Any savings realized by agencies as a result of these programs are to be retained by the agencies for use in continuing the program.

SECTION 15.—REVIEW OF PRODUCT SPECIFICATIONS AND STANDARDS

This section authorizes the Secretary to conduct an independent technical assessment of any product specification or standard set by a Federal, State, or local government agency, industry trade association, or other standard-setting group that disfavors the use of a recyclable commodity as a substitute for comparable virgin feedstocks, and has a substantial adverse impact on existing or potential markets for the recyclable commodity. However, the Secretary is prohibited from reviewing specifications or standards established by private firms or persons. The Secretary is authorized to publish the results of this review, and provide technical assistance to remove such barriers. Industries or local governments may petition the Secretary to conduct such a review, and such petition must be decided within 90 days.

SECTION 16.—INTERAGENCY WORKING GROUP

This section requires the Secretary to establish an interagency working group to assist in the development of regulations and guidelines and the collection of information required by the bill, in order to ensure that the regulations and guidelines developed under the bill are consistent with actions taken by EPA and other Federal agencies. The representatives in the working group shall consist of persons appointed by the Secretary, persons appointed by EPA, and the Secretaries of Agriculture, Treasury, Transportation, Interior, Energy, and other appropriate departments.

SECTION 17.—JUDICIAL REVIEW

This section provides that judicial review of any regulation promulgated under the bill must be in accordance with chapter 7 of title 5, U.S.C. However, petitions for review of any action by the Secretary in promulgating any regulation under this legislation

only can be filed in the U.S. Court of Appeals for the District of Columbia within 90 days after the promulgation of the regulation. In the course of such review, the court may order the production of evidence in addition to that before the Secretary if the court is satisfied that the information is material and that there are reasonable grounds for failing to bring the evidence before the Secretary during administrative consideration of the issue.

SECTION 18.—DEFINITIONS

This section sets out the definitions that will be used in the bill. Among the most significant are the definitions of "recycling," "solid waste," "recovered materials," and "recoverable paper and paperboard." These definitions are intended to distinguish recovery of material from its disposal, and recovered material from solid waste. Since the purpose of the bill is to promote the use of recovered material, this distinction is essential. It is important to recognize that items diverted from solid waste are commodities with a market value, as opposed to valueless waste products.

With respect to the definition of recycling, the bill takes an inclusive approach, taking in all steps in the process as the means of accomplishing the end result—a new product made with recycled content. No one part of the process can be considered "recycling," but many activities, including source separation, collection, transport, processing and upgrading are integral to the success of recycling and are intended to be included within the meaning of the term.

The definition of "recoverable paper and paperboard" includes all types of post-consumer refuse materials composed of paper. Post-consumer refuse materials are intended to include only those products generated by a business or consumer which have served their intended end uses, and which have been separated or diverted from solid waste. Wastes generated during production of an end product are not post-consumer refuse materials.

"Recoverable paper and paperboard" also is defined to include certain types of pre-consumer materials. However, forest residues and by-products generated from, and commonly reused within, an original manufacturing process are excluded. For example, "mill broke" (paper that has been discarded anywhere in the papermaking process or other mill operations, whether it is wet or dry, and all wastepaper that has not left the mill) and trim from sheeting and converting operations within a manufacturing mill or from a mill owned by the same parent company are intended to be excluded from the definition of "recovered paper and paperboard." The excluded types of scrap materials are those currently used in the papermaking process which, as a consequence, do not add to the solid waste disposal problem. Thus, the provisions of this bill are not needed to encourage recovery and processing of these materials.

SECTION 19.—SEPARABILITY

This section provides that, if any portion of the bill is held invalid, the remainder of the legislation is severable and remains in effect.

SECTION 20.—AMOUNT OF AUTHORIZATION

This section authorizes an appropriation to DOC of \$60 million in each of fiscal years 1990 through 1994 to carry out the requirements of the bill.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman).

SOLID WASTE DISPOSAL ACT

Section 6002 of that Act

[FEDERAL PROCUREMENT

[SEC. 6002. (a) APPLICATION OF SECTION.—Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

[(b) PROCUREMENT SUBJECT TO OTHER LAW.—Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6004 (as promulgated before the date of enactment of this section under comparable provision of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

[(c) REQUIREMENTS.—(a) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(i) practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

[(A) are not reasonably available within a reasonable period of time;

[(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

[(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

[(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capabil-

ity of using energy of fuels derived from solid waste as a primary or supplementary fuel shall use capability to the maximum extent practicable.

[(3) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

[(A) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

[(B) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.

[(d) SPECIFICATIONS.—All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

[(1) as expeditiously as possible but in any event no later than eighteen months after the date of enactment of the Hazardous and Solid Waste Amendments of 1984, eliminate from such specifications—

[(A) any exclusion of recovered materials and

[(B) any requirement that items be manufactured from virgin materials; and

[(2) within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item.

[(e) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

[(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1); and

[(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after the enactment of the Hazardous and Solid Waste Amendments of 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

[(A) the availability of such items;

[(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

[(C) the economic and technological feasibility of producing and using such items; and

[(D) other uses for such recovered materials.

[(f) **PROCUREMENT OF SERVICES.**—A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

[(g) **EXECUTIVE OFFICE.**—The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d).

[(h) **DEFINITION.**—As used in this section, in the case of paper products, the term "recovered materials" includes—

[(1) postconsumer materials such as—

[(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

[(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

[(2) manufacturing, forest residues, and other wastes such as—

[(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

[(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

[(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

[(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

[(E) fibers recovered from waste water which otherwise would enter the waste stream.

[(i) PROCUREMENT PROGRAM.— (1) Within one year after the date of publication of applicable guidelines under subsection (e), each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

[(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

[(A) a recovered materials preference program;

[(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

[(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

[(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1).

[(3) In developing the preference program, the following options shall be considered for adoption:

[(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C), a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1)). Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

[(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1)) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C).

Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.]